

On the Compatibility of Epistocracy and Public Reason

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Abstract: In “epistocratic” forms of government, political power is wielded by those who possess the knowledge relevant to good policymaking. Some democrats—notably, David Estlund—concede that epistocracy might produce better political outcomes than democracy but argue that epistocracy cannot be justified under public reason. These objections to epistocracy are unsound because they violate a *viability constraint*: They are also fatal to democracy and all other plausible political arrangements. Moreover, there is a problem with the public reason framework itself—a problem which can only be solved by providing a better definition for what makes an objection to a political arrangement a “reasonable” one.

Keywords: epistocracy; meritocracy; democracy; public reason; David Estlund; political legitimacy

Political philosophy largely operates under the assumption that if there is a legitimate political authority then it is a democratic one. The battle, inasmuch as it is still being fought, is only between the anarchist and the democrat; the despot, the aristocrat, and the theocrat have all been vanquished.

Recently, however, some philosophers have thought it high time to question the

assumption that democracy occupies the justificatory high ground. While none wants to adopt any of the non-democratic forms of government mentioned above—and rightly so—there is a small but growing interest in governments characterized not by the equal participation of all citizens,¹ but rather by the entrusting of political power in the hands of an elite subset of them—namely, those who will do a better job of governing owing to their superior political knowledge. Call these “meritocratic” or “epistocratic” forms of government.²

Epistocracy is the first plausible competitor to democracy to enter the debate in some time. It is motivated, I think, by the nasty state of contemporary democratic politics. Many philosophers, myself included, look at the low quality of political discourse in the United States and wonder if there might be a better way. After all, the American people loathe their representatives,³ and have for many years—yet they reelect the same politicians, election cycle after election cycle. Scandal, incompetence, and failure are not dangers when what matters most to the democratic electorate is incumbency. If the American people know that they are choosing poorly but yet continue to do so, then perhaps it is time to take political decisions out of their hands, at least to some degree.

Before epistocratic theories of government can be fully developed there is a challenge that must be met. Some philosophers have argued that epistocracy fails to meet a widely-accepted standard of political justification: namely, public reason. One goal of this paper is to demonstrate that these objections to epistocracy are unsound. The second goal is to show that something is amiss with the public reason framework itself, as its standard of “reasonable” is so

1 By “equal participation” I mean that all citizens who meet eligibility criteria have an equal voice (as a formal matter) in whatever direct political decision-making exists (*e.g.* referenda) and in the election of their representatives.

2 I’ll use the latter term in this paper. It was introduced by David Estlund, “Why Not Epistocracy?”, in Naomi Reshotko (ed.), *Desire, Identity, and Existence: Essays in Honor of T. M. Penner* (Kelowna, BC: Academic Printing and Publishing, 2003), 53–69.

3 Dugan, A. 2015. U.S. Congress Starts Off Year with 16% Job Approval. *Gallup*. Web, retrieved 18 January 2015.

low that it is unlikely that *any* political arrangement—epistocratic, democratic, or otherwise—could be justified under it.

I focus on the public reason-based argument given by David Estlund,⁴ as it is the most complete and best-developed attack on the justificatory status of epistocracy. The paper is organized as follows: In §1 I briefly describe the ideal of public reason on which Estlund rests his argument and in §2 I give that argument—Estlund’s *demographic objection* to epistocracy. In §3 I describe a constraint—the *viability constraint*—which all public reason-based objections must meet. In §4 I show how Estlund’s demographic objection fails to meet the viability constraint. In §5 and §6 I discuss the larger implications of my argument for public reason and political theory.

1. Liberal Justification and Public Reason

Liberalism is the most important theory (or, more precisely, collection of theories) of political philosophy in the modern era. Not only has it been highly influential within political thought, liberalism has had a huge effect on the actual development of political societies since the eighteenth century. There are, of course, multiple and sometimes competing conceptions of liberalism: Distinctions are drawn between positive and negative liberty;⁵ arguments abound about whether liberal respect for freedom stretches across political boundaries into illiberal states; and, most saliently, there are disputes between classical and modern liberals over whether liberty includes certain property rights. Nevertheless, it is striking that nowadays there is not much debate over whether we should be liberals (*pace* increasingly vocal communitarians); the

4 Estlund, “Why Not Epistocracy?”; *Democratic Authority: A Philosophical Framework* (Princeton: Princeton University Press, 2008).

5 See Isaiah Berlin, “Two Concepts of Liberty”, in his *Four Essays on Liberty* (Oxford: Oxford University Press, 1969), 118–72.

debate is about what sort of liberals we ought to be.

Variations notwithstanding, William Galston puts liberalism's core principle thus: "Liberalism requires a robust though rebuttable presumption in favor of individuals and groups leading their lives as they see fit, within a broad range of legitimate variation, in accordance with their own understanding of what gives life meaning and value."⁶ A core liberal principle like this naturally gives rise to questions about political justification, for if there is a presumption in favor of a person's liberty then the proponent of the coercive state bears the burden of justifying infringements upon it. This is what I mean by "liberal justification".

Just as multiple conceptions of liberalism proliferate, so too do different accounts of what this liberal justification consists in. The most attractive and popular version is that of *public reason*: the idea, roughly, that political authority is legitimate just in case it can be justified on grounds no one may reasonably reject. Philosophers who endorse public reason include Gerald Gaus, Jürgen Habermas, Charles Larmore, and Rawls,⁷ who says that

our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason.⁸

This is the public reason ideal. It serves two purposes. First, it justifies political authority by ensuring that the legislative procedure is a generally acceptable one. For example, public reason excludes the possibility that a law might be imposed on the grounds that the Bible demands it;

6 William A. Galston, *Liberal Pluralism: The Implications of Value Pluralism for Political Theory and Practice* (New York: Cambridge University Press, 2002), p. 3.

7 Gerald Gaus, *Justificatory Liberalism: An Essay on Epistemology and Political Theory* (Oxford: Oxford University Press, 1996); *The Order of Public Reason: A Theory of Freedom and Morality in a Diverse and Bounded World* (Cambridge: Cambridge University Press, 2011); Jürgen Habermas, "Reconciliation Through the Public Use of Reason: Remarks on John Rawls's Political Liberalism", *Journal of Philosophy* 92 (1995): 109-31; *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. William Rehg (Cambridge: MIT Press, 1996); Charles Larmore, "The Moral Basis of Political Liberalism", *Journal of Philosophy* 96 (1999): 599-625; John Rawls, *Political Liberalism*, expanded ed. (New York: Columbia University Press, 2005 [1993]).

8 Rawls, *Political Liberalism*, p. 137.

some reasonable persons will not accede to that theological justification.⁹

Second, public reason provides a practical solution to the problem of disagreement. The tough moral and political questions about which we disagree are exactly those the authority must legislate on—we need rules regarding abortion, taxation, and so on. The brute fact of disagreement means that no matter the content of legislation, *some* people are going to be disappointed. But at least they can take solace in the fact that the legislative procedure was one that they endorsed as reasonable—even if its result was, by their lights, incorrect. As Thomas Nagel puts it,

the task of discovering the conditions of legitimacy is traditionally conceived as that of finding a way to justify a political system to everyone who is required to live under it. If the justification is successful, no one will have grounds for moral complaint about the way it takes into account and weighs his interests and point of view.¹⁰

2. **Estlund's *Demographic Objection***

Estlund believes that the following challenge to epistocratic political rule is a reasonable one:

(The demographic objection) The educated portion of the populace may disproportionately have epistemically damaging features that countervail the admitted epistemic benefits of education.¹¹

Whether or not this objection is true is an open question. But what is not an open question, Estlund thinks, is whether one might reasonably endorse the objection. Estlund believes that a

⁹ In this paper I ignore the distinction, tangential to my argument here but important in other contexts, between a reasonable objection and an objection made by a reasonable person.

¹⁰ Thomas Nagel, *Equality and Partiality* (Oxford: Oxford University Press, 1991), p. 33.

¹¹ Estlund, *Democratic Authority*, p. 215.

person might do so, and that is sufficient to reject epistocratic rule on grounds of public reason.

Estlund refers to the “admitted epistemic benefits of education” because the candidate epistocratic system that he means to attack is John Stuart Mill’s plural voting proposal. Mill argues that the better-educated should be given additional votes, as this will produce superior political outcomes (including for the uneducated).¹² The decision to attack Mill’s proposal is wise for two reasons. First, Mill’s system rests on the eminently plausible idea that political competence improves with education. Estlund calls this *the political value of education* and notes that “many of us will find [it] extremely plausible, and even beyond reasonable disagreement”.¹³ Second, Mill’s system includes universal suffrage. Plural voting is thus a modest form of epistocracy, and if it can be shown to be ruled out by public reason then, *a fortiori*, more radical epistocratic proposals will fall as well.

Estlund’s argument is designed to satisfy our intuition that political decision-making can be improved through education while at the same time denying (or at least holding that it is reasonable to deny) that better outcomes *would in fact* result from granting additional political power to the educated. The idea is this: Even if we concede that education improves political competence, it might be the case that education carries with it “epistemically damaging features” that nullify (or outweigh) any advantages. Consider the following, specific example to get a sense of Estlund’s approach: It seems plain that knowledge of international finance is a useful trait in a president. Let us imagine two candidates for the presidency, *A* and *B*. They are, *prima facie*, identical in their qualifications with the exception that *B* has experience in international finance. A citizen might, on Estlund’s view, still reasonably prefer *A* to *B*. Not because knowledge of international finance is not helpful—it is—but because the citizen might

¹² See Mill’s *Considerations on Representative Government* and “Thoughts on Parliamentary Reform”.

¹³ Estlund, *Democratic Authority*, p. 211.

reasonably believe that knowledge of international finance is associated with other, objectionable traits which nullify the advantages that it provides. The citizen might reasonably worry, for example, that a candidate with knowledge of international finance also possesses an uninterest in social justice which outweighs the benefits of the knowledge.

Estlund's argument thus turns importantly on ignorance. In the above example, I stipulated that the two candidates were *prima facie* identical; that is, we had no direct reason to believe that *B* was, in fact, uninterested in social justice (at least in comparison to *A*). But for Estlund that is not important; a citizen might reasonably believe that *B* was uninterested in social justice on the basis of what he knows about *B*'s knowledge of international finance.

The demographic objection is simply this criticism taken more broadly. Rather than worry about epistemically damaging features associated with some specific knowledge, we worry about epistemically damaging features associated with *education* (where we define "education" as the knowledge, whatever it be, that lends itself to good political decision-making). Just as a person might reasonably believe that knowledge of international finance, while good in itself, carries along with it epistemically damaging features, a person might reasonably believe the same about education. And if that is so then a political system that grants additional power to the educated can be ruled out on grounds of public reason.

This objection to epistocracy is highly speculative, which is problematic for reasons that I will discuss in §5. Nevertheless, it has some plausibility and we can see how these epistemically damaging features might obtain. First, it could be that the process by which a positive trait is produced concomitantly produces a negative trait. One gains knowledge of international finance by working on Wall Street, a job that maybe also produces an uninterest in social justice. Second, a positive trait like knowledge of international finance might be associated with a certain

sort of character that is associated with negative traits. Here we concede that knowledge of international finance is a good thing, but then conclude that the sorts of people likely to obtain this knowledge are the sorts of people likely to be deaf to needs of the poor and disadvantaged.

I concede that under both of these analyses we can conjure up a scenario to satisfy Estlund's demographic objection. But are there any good reasons to believe that *in fact* education carries along with it these epistemically damaging features? What if we restricted "education" to a very basic definition—including literacy, arithmetic, and basic civics? Could one really reasonably believe that literacy is associated with epistemically damaging features? Estlund believes so: "The feature of literacy travels with other features such as race and class in such a way that the overall epistemic effect can reasonably be held to be negative, despite the undeniable epistemic benefits of literacy considered alone."¹⁴

Whether or not it is in fact true, a citizen might reasonably believe that by granting additional power to the literate we skew the political process in such a way that the net effect is negative. By granting extra votes to the educated, as Mill desires, certain races and classes are underrepresented in a way which nullifies whatever epistemic advantage education provides. I am willing to stipulate that Estlund can make a *prima facie* plausible demographic argument, but I do want to make two points concerning literacy specifically.

First, Estlund gives the example of Jim Crow-era "literacy tests", which "deprive[d] the [political] process of an epistemically important perspective on a leading form of injustice" (2008: 215). That is indeed an important historical cause for concern, but it is a straw man against the epistocrat. These tests were neither intended to, nor were effective in, testing literacy; they were designed to deny suffrage to African-Americans and were so impossibly hard

¹⁴ *Ibid.*, pp. 217–18.

that any person, no matter her proficiency in English, would have struggled to pass them.¹⁵ Any number of wicked and discriminatory policies might be enacted under the guise of an epistocratic feature like literacy. The question before us now is not whether these policies carry epistemically damaging features, but whether *good-faith* attempts to take advantage of epistocratic features have historically given voice to epistemically damaging features as well.

Second, while it is true that race and class are correlated with literacy,¹⁶ mere correlation is insufficient for the purposes of Estlund's argument. To make the demographic objection work, Estlund must show that the literate have epistemically damaging features that nullify the value of literacy (or, more precisely, he must show that someone might reasonably believe that they have these features). This does not follow from the empirical fact of racial differences in literacy. It seems perfectly reasonable to say both that literacy differences in race and class are a bad thing from the point-of-view of epistemic quality, and that the way we fix things is by getting more literate people in government. The voters of Louisiana chose, democratically, Jim Crow laws when they again and again elected politicians who supported these laws. If political control had been, rather, in the hands of Louisiana university professors—even if they were more homogeneous in terms of race and class than the Louisiana electorate at large—perhaps more just legislation would have been the result.

3. The Viability Constraint

The demographic objection is just one example of a public reason-based challenge that might be raised against a political arrangement. Some objections will be plainly true and thus reasonable

¹⁵ See Nick Kotz, *Judgment Days: Lyndon Baines Johnson, Martin Luther King, Jr., and the Laws that Changed America* (New York: Houghton Mifflin, 2005).

¹⁶ See Mark Kutner, Elizabeth Greenberg, Ying Jin, Bridget Boyle, Yung-chen Hsu, and Eric Dunleavy, *Literacy in Everyday Life: Results from the 2003 National Assessment of Adult Literacy* (Washington, DC: National Center for Education Statistics, 2007).

to endorse. For example, we can challenge Nazi Party rule on moral grounds. That Nazism is immoral is plainly true, and so the objection is a reasonable one. Other objections will be plainly false and thus unreasonable—such as objecting to democracy on the grounds that it turns political authority over to our Martian overlords. But there is a large middle ground here owing to our ignorance. There may be objections that are true but unreasonable to endorse (because we lack evidence to adduce in favor of the objection), or false objections that are reasonable to endorse (owing to the existence of misleading “evidence”). In many cases, the facts involved with an objection are just convoluted, and so a person might reasonably fall on either side of it. The demographic objection is perhaps an example of one of these cases.

The point here is simply that public reason-based challenges to political rule are diverse and myriad. I propose that *all* challenges must satisfy the following condition:

(The viability constraint) If an objection *O* to a proposed political arrangement *A* purports to show that *A* is unjustifiable under public reason, then *O* is sound only if *O* does not show *every* plausible political arrangement to be unjustifiable.

This is a modest condition. It states only that public reason-based challenges ought to leave open the possibility of *some* legitimate political rule. Let us imagine an objection to epistocracy that, we are told, is reasonable to endorse. We ought to reject that objection if it would also be fatal to communism, democracy, theocracy, and so on. Now, an anarchist could argue that political authority is legitimate only if it cannot be objected to on grounds of public reason, and, further, that some reasonable objections tell against *all* potential authorities. But the rest of us, including Estlund, take it as a presupposition that there *is* a legitimate political authority (at least one,

anyway). Therefore, an argument that when taken to its logical conclusion precludes the possibility of legitimate political rule is shown unsound by *reductio*.

The viability constraint may be seen as either a hurdle to be surmounted after the establishment of an objection's reasonableness (which is how I have been presenting it), or as inherent to reasonableness itself. That is, we might think it part and parcel of what it means for an objection to be reasonable is that it not preclude political authority. I take no position on that matter, and it is irrelevant to my argument.

The viability constraint can be simplified for the purposes of our discussion. Again, in contemporary political philosophy democracy occupies the high ground of liberal justification. Therefore, the "plausible political arrangement" clause can be reduced to democracy, and we can concentrate on challenges to epistocratic rule:

(The viability constraint*) If an objection *O* to epistocracy purports to show that epistocracy is unjustifiable under public reason, then *O* is sound only if *O* does not show that democracy is unjustifiable as well.

With this constraint in place, to refute Estlund it suffices to show that one might reasonably object to democracy on demographic grounds.

4. The Demographic Objection Violates the Viability Constraint

The demographic objection does fail to satisfy the viability constraint, and we should therefore regard it as an unsound attack on epistocracy.

It will be helpful to consult the empirical work that has been done on the political

knowledge, rationality, and motivations of voters in democratic societies. For reasons that I will explain in §5, strictly speaking this is not necessary, since the public reason burden of proof is so low that I need only generate a reasonable *conjecture* about the epistemically damaging features of democracy. But my point will be more forceful if a reasonable conclusion can be drawn from empirical data on the biases of democratic voters. If the data suggest that the democratic demographic has epistemically damaging features that outweigh its benefits, then democracy fails the viability constraint and the demographic objection cannot be used as a public reason-based ground to reject epistocracy.

I am going to identify two epistemically damaging features associated with democracy which a person might reasonably believe would negate any benefits of the democratic process. There is a question to answer first, though: Why think that democracy provides any benefits at all? What makes democracy a political arrangement worth pursuing in the first place from an epistemic point-of-view?

Estlund began from a baseline of democratic competence, postulated a epistocratic alternative alleged to be superior owing to the political value of education, and then argued that there were reasonable grounds to reject that alleged superiority (*viz.* the unattractive features of the epistocratic demographic). I am considering the reverse strategy, taking a epistocratic government as the baseline and postulating a superior democratic alternative. What, then, is the democratic correlate of the political value of education? What reason might we have to conclude that democracy produces superior outcomes?

Aristotle gives a famous answer in the *Politics*:

The many, of whom none is individually an excellent man, nevertheless can when joined together be better—not as individuals but all together—than those who are best, just as dinners contributed by

many can be better than those equipped from a single expenditure.¹⁷

This is the idea of the *wisdom of the crowd*, which, as Aristotle gives it, is more an observation than an explanation. But several rigorous arguments have been given to explain the wisdom of the crowd,¹⁸ perhaps the most famous of which is *Condorcet's Jury Theorem*.¹⁹ The theorem states that when a group of voters faces a binary decision (*i.e.* a right decision versus a wrong decision), so long as each individual voter is more likely than not to make the right decision, the probability that the group gets it right tends asymptotically to 1 as the size of the group increases.²⁰ So, for example, if we want our political system to make some decision, and we can choose between (1) letting an enlightened despot, with a 98% chance of getting the decision right, make it; or (2) leaving the matter to a democratic group of voters of size N (N odd), where each voter has only a 52% chance of getting the decision right, it turns out that we're better off going with (2) when $N > 2,633$.

Let's assume that Condorcet's Jury Theorem applies to actual democratic voting; that is, that we could benefit from the wisdom of the crowd in this way.²¹ The question before us, then, is this: Can one reasonably believe that the democratic electorate possesses biases which, either individually or in the aggregate, nullify the benefits of the wisdom of the crowd? I believe so; we can reasonably endorse an objection like the following:

17 Aristotle's *Politics*, trans. Carnes Lord (Chicago: University of Chicago Press, 1984), 1281a44–1281b2.

18 For a survey of these, see Hélène Landemore and Jon Elster, *Collective Wisdom: Principles and Mechanisms* (New York: Cambridge University Press, 2012).

19 First articulated in Condorcet's "Essai sur l'application de l'analyse à la probabilité des décisions rendues à la pluralité des voix".

20 There are complexities here. For example, it's not technically necessary that each voter be more likely than not to make the right decision; the theorem functions equally well so long as the mean probability of a voter getting it right is >0.5 . See Bernard Grofman, "Judgmental Competence of Individuals and Groups in a Dichotomous Choice Situation: Is a Majority of Heads Better than One?", *Journal of Mathematical Sociology* 6 (1978): 47–60.

21 In fact, there are good reasons to believe that actual democracies do not obey Condorcet's Jury Theorem. Voters may not make their decisions independent of each other, as the theorem requires. Or perhaps the average voter has under a 50% chance of getting political decisions right. That would lead to political disaster, not success. The theorem also assumes that political information collection remains unchanged with the size of the electorate, but in real life it stands to reason that as one's vote matters less and less one is increasingly unwilling to educate oneself on political matters. Any one of these objections would be fatal to the alleged benefits of the theorem, but my argument serves even if none applies.

(The demographic objection to democracy) The democratic electorate may disproportionately have epistemically damaging features that countervail the admitted epistemic benefits of the wisdom of the crowd.

As with Estlund's argument against epistocracy, here we admit that, *prima facie*, better results can be obtained democratically for the reasons given by Condorcet's Jury Theorem, but then we seek a basis to reasonably believe that the results are in fact *worse* owing to some latent bias.

I want to stress the symmetry between Estlund's case against epistocracy and my case against democracy. Estlund begins by tentatively conceding a basis for believing that epistocracy will produce better political results than democracy. This basis is the political value of education. It is an *epistemic* basis because of "its tendency to produce outcomes that are correct by independent standards".²² But, according to Estlund, epistocratic rule in the actual world would *not* produce these better outcomes in fact (or, at least, it is reasonable to believe that it would not), since the educated class possesses biases that offset the political value of education.

My approach is the same. I concede that Condorcet's Jury Theorem illuminates something epistemically valuable about the wisdom of the crowd. No matter what ruling arrangement we choose, better political results will be produced if we can take advantage of Condorcet-type aggregation to arrive at the correct decision. But in the actual world, we can reasonably expect this epistemic advantage to be outweighed by the biases of the democratic electorate (two of which I am about to describe). The political value of education and the wisdom of the crowd are, it is conceded all around, on their own good things when it comes to

²² Estlund, *Democratic Authority*, p. 98.

political decision-making. The question that confronts us is whether they carry along with them epistemically damaging features.

I should note here that arguments other than Condorcet's have been given in favor of the wisdom of the crowd. These include *the miracle of aggregation*, the idea that if voter errors are random they should cancel out and thus allow a well-informed minority to prevail, and the *Hong-Page Theorem*, which asserts that diversity among voters is just as important as voters' ability to make the right decisions.²³ These are both less compelling, in my opinion, than Condorcet's Jury Theorem.²⁴ But a full survey of all the arguments that one might give in favor of the wisdom of the crowd is unnecessary, since I need not show that each one of these arguments is false, but rather that there is a reasonable case to be made that the wisdom of the crowd, however that is explained theoretically, is outweighed by bias.

Bryan Caplan has argued extensively that the lay, democratic electorate possesses just such biases.²⁵ Caplan identifies four: an *antimarket bias*, "a tendency to underestimate the economic benefits of the market mechanism"; an *antiforeign bias*, "a tendency to underestimate the economic benefits of interaction with foreigners"; a *make-work bias*, "a tendency to underestimate the economic benefits of conserving labor"; and a *pessimistic bias*, "a tendency to overestimate the severity of economic problems and underestimate the (recent) past, present, and

23 On the miracle of aggregation, see James Surowiecki, *The Wisdom of Crowds* (New York: Doubleday, 2004). On the Hong-Page Theorem, Lu Hong and Scott E. Page, "Groups of Diverse Problem Solvers Can Outperform Groups of High-ability Problem Solvers", *Proceedings of the National Academy of Sciences* 101 (2004): 16,385–89.

24 For some reasons why, see Jason Brennan, "How Smart Is Democracy? You Can't Answer that Question *A Priori*", *Critical Review* 26 (2014): 1–26.

25 Bryan Caplan, "What Makes People Think Like Economists? Evidence on Economic Cognition from the Survey of Americans and Economists on the Economy", *Journal of Law and Economics* 44 (2001): 395–426; "Systematically Biased Beliefs about Economics: Robust Evidence of Judgemental Anomalies from the Survey of Americans and Economists on the Economy", *Economic Journal* 112 (2002): 433–58; "Sociotropes, Systematic Bias, and Political Failure: Reflections on the Survey of Americans and Economists on the Economy", *Social Science Quarterly* 83 (2002): 416–35; *The Myth of the Rational Voter: Why Democracies Choose Bad Policies* (Princeton: Princeton University Press, 2007).

future performance of the economy”.²⁶

Since economic knowledge is an essential part—some would say the most important part—of political knowledge, such biases may collectively outweigh the advantages provided by the wisdom of the crowd. Indeed, any one of these biases on its own might reasonably be thought to be having a devastating effect on economic prosperity. It stands to reason, for example, that owing to antforeign bias American voters are more protectionistic and skeptical of free migration than is warranted. The consequences of the policy mistakes that follow could be not just bad from the points-of-view of productivity and justice but catastrophic. As Jason Brennan points out, “the consensus among published economic work is that . . . the deadweight loss of these restrictions [on immigration] is around 100 percent of world product—that is, that we should be around \$140 trillion in world product, but we are only at \$70 trillion . . . Moreover, the people who suffer the most from these deadweight losses are the most vulnerable people in the world”.²⁷

Caplan’s fascinating research suggests that important public policies are being adversely affected by the democratic public’s erroneous economic beliefs. It is interesting to note that these errors have no partisan alignment. For example, the American people are far more eager to blame lackluster economic growth on welfare, high taxes, and affirmative action programs than are economists. At the same time, Americans are less inclined than economists to regard trade agreements and workforce reductions as good for the economy.²⁸ Of course, people will disagree with aspects of Caplan’s research, and particularly about whether these biases outweigh the benefits provided by the wisdom of the crowd.²⁹ But what is clear is that it is at least *reasonable*

26 Caplan, *Myth of the Rational Voter*, p. 30, p. 36, p. 40, p. 44, italics omitted throughout.

27 Brennan, “How Smart Is Democracy?”, p. 18.

28 See Caplan, *Myth of the Rational Voter*, pp. 85–86.

29 It’s worth noting that Caplan’s results are similar to those obtained by Scott L. Althaus, *Collective Preferences in Democratic Politics: Opinion Surveys and the Will of the People* (New York: Cambridge University Press, 2003) and Martin Gilens, “Political Ignorance and Collective Policy Preferences”, *American Political Science*

to believe that these biases are severe (maybe even to the tune of \$70 trillion in gross world product), and mere reasonableness is the standard that has been set. In fact, the work that Caplan and others have done to identify these democratic biases is far more extensive than the evidence adduced for the demographic objection to epistocracy (which, as I will discuss in §5, is perhaps nonexistent). The demographic objection tells against democracy, too.

Another bias that might creep into the democratic process is simple racism. Several studies have shown, for example, that racism cost President Obama a significant number of votes in the 2008 election;³⁰ “anti-African-American racism appears to have been an important component of the 2008 election, perhaps considerably reducing Obama’s share of the vote”.³¹ Had the economy not been foundering, and the anti-Republican sentiment not been so strong, Obama might have lost the election on account of his race. In my view that would have been unjust.³² But for the purposes of this paper the important point is that racism could offset whatever epistemic advantages of democratic selection there are. For even if it is true that race is a crude proxy for something relevant, like intelligence,³³ in our era of multi-year campaigns and 24-hour news cycles there is no need to resort to crude proxies; the man can be evaluated on his merits. It is reasonable to think that racial bias, which we know through research exists in the democratic electorate, would not be present (or would at least be far less severe) in a suitably-chosen epistocratic class. It is further reasonable to believe that intelligence and education helps

Review 95 (2001): 379–96. Althaus and Gilens rely on different data sets than Caplan.

30 E.g. Josh Pasek, Alexander Tahk, Yphtach Lelkes, Jon A. Krosnick, B. Keith Payne, Omair Akhtar, and Trevor Tompson, “Determinants of Turnout and Candidate Choice in the 2008 U.S. Presidential Election: Illuminating the Impact of Racial Prejudice and Other Considerations”, *Public Opinion Quarterly* 73 (2009): 943–94; B. Keith Payne, Jon A. Krosnick, Josh Pasek, Yphtach Lelkes, Omair Akhtar, and Trevor Tompson, “Implicit and Explicit Prejudice in the 2008 American Presidential Election”, *Journal of Experimental Social Psychology* 46 (2010): 367–74; and Spencer Piston, “How Explicit Racial Prejudice Hurt Obama in the 2008 Election”, *Political Behavior* 32 (2010): 431–51.

31 Pasek *et al.*, “Determinants of Turnout and Candidate Choice”, p. 982.

32 See Thomas Mulligan, *The Just and Meritocratic State* (doctoral dissertation, 2015).

33 See, e.g., Richard J. Herrnstein and Charles Murray, *The Bell Curve: Intelligence and Class Structure in American Life* (New York: Free Press, 1994).

one be alert to one's own racial biases.³⁴

Estlund anticipates the danger that an argument like mine could pose to his theory. His tries to head it off by treating democracy as a default ruling arrangement which need not meet a higher standard of justification:

There is something additional present in the case of invidious comparisons used to justify epistocratic arrangements. Here, not only is each minority voter in each decision subject to rule by the majority in that single case. Under unequal suffrage, some people are formally and permanently subjected to the rule of certain others. This is a ruling relationship that is not present under majority rule, even though majority rule is also a ruling relationship of a kind. As such, this additional element is itself subject to an extra burden of justification that universal suffrage does not incur, and if it can't meet it, the default is the absence of that particular ruling relation.³⁵

It is critical for Estlund's argument that this view of democracy-as-default be true. But it is false. There are many things that can be said against it.

First, Estlund's definition of "democracy" is a weak one: "What I will mean by *democracy* is the actual collective authorization of laws and policies by the people subject to them."³⁶ But on this definition many epistocratic arrangements will be democratic. A plural voting system like the one proposed by Mill has universal suffrage, after all. Perhaps any plausible epistocratic system must give each citizen a voice in his government through a vote. But epistocratic systems—even ones which include universal suffrage—rely on competence rather than popularity in making political decisions, and thus are massively different from our current approach to politics. Estlund's view is also puzzling for the following reason: If "universal suffrage achieves a certain default status",³⁷ and Millian-style plural voting includes

³⁴ At least one study has shown a correlation between low intelligence and racism—viz. Gordon Hodson and Michael A. Busseri, "Bright Minds and Dark Attitudes: Lower Cognitive Ability Predicts Greater Prejudice through Right-wing Ideology and Low Intergroup Contact", *Psychological Science* 23 (2012): 187–95.

³⁵ Estlund, *Democratic Authority*, p. 37.

³⁶ *Ibid.*, p. 38.

³⁷ *Ibid.*

universal suffrage, then how can Estlund's argument (*viz.* the demographic objection) show that plural voting is disqualified under public reason? That is, if "democracy" is walled off from these objections, and plural voting qualifies under Estlund's definition as democratic, then it simply is not tenable to say that the demographic objection may be leveled against plural voting but not against one man, one vote democracy. Perhaps Estlund meant to stipulate that the definition of "universal suffrage" includes that no one gets more than one vote. It is a puzzle.

Second, it is simply not true that under majority rule some people are not "formally and permanently subject to the rule of certain others". It is not true if taken literally—I am subject to the rule of university administrators, the police, and local, state, and federal officials—but it is also not true if interpreted as saying that citizens ought to have legislative control over the persons who exercise authority over them. In the United States, for example, Executive Branch agencies wield significant authority over citizens and operate largely independent of the legislative process. These agencies produce rules which can be broad in their scope, affecting all citizens, and which are backed by the force of criminal law. While citizens may weigh in on the wisdom of these rules via the public comment process, agency administrators are under no obligation to obey the desires of the citizens whom their rules affect. Citizens can exercise some theoretical electoral control over the process (by electing the President who chooses and the Senators who approve agency heads, and by indirectly selecting the laws that give rise to subsequent rulemaking), but in practice much control is exerted independent of the democratic process.

Third, the whole idea of treating democracy, however defined, as the default ruling arrangement is an odd one. If we are to accept the liberal idea that there is "a special burden of justification on proposed relations of authority or legitimate coercive power", and that "when the

burden is not discharged . . . the default condition is the absence of authority or legitimate power”,³⁸ then we should regard prepolitical anarchy as the default, not democracy. That is the natural way to look at public reason justification for political authority. Certainly there is no *a priori* reason why democracy would include less “authority or legitimate coercive power”, since the democratic electorate might well choose to cede huge control over to the government. The American people could repeal the Bill of Rights, decide on a command economy, and put restrictions on speech, free association, sexual behavior, and so on. There are neither *a priori* nor *a posteriori* reasons to think that an epistocratic government would exercise more control over its citizens than a democratic government. For that reason, democracy cannot be the default ruling arrangement if we what are concerned about is justifying coercive power.

Fourth, Estlund uses “invidious comparisons” as a term of art in referring to epistocratic arrangements.³⁹ This is ironic, since democracy itself can be deeply invidious. It certainly is in modern-day America. I am not a resentful person by nature but I *do* resent regularly being regarded as a coward and an idiot for my political views by prominent voices of the American right wing. I resent that four years of military service and six years working as a CIA case officer did nothing to prove my patriotism to these people, and that nothing I do ever can. I resent the huge political influence that these demagogues wield and the *de facto* power that they have over my life. I resent that the American democratic electorate is short-sighted, selfish, and easily molded through inane rhetoric. I resent that intelligence, experience, and thoughtfulness are barriers to entry in American politics, and that a surefire way to wealth and political power is to pander to the dumbest and most hateful elements of the American electorate. If Estlund is worried about resentment and invidiousness, he ought to worry about the calamitous state of

38 *Ibid.*, p. 37.

39 *Ibid.*, p. 36.

contemporary democratic politics.

5. The Standard of “Reasonable”

I turn now to a more general criticism of the public reason framework. In §4 I pointed to some empirical data which suggest that the democratic electorate possesses specific epistemically damaging features. In doing so, I did far more than some proponents of public reason think necessary to render an objection a reasonable one. Estlund suggests, for example, that we need not have any evidence at all that an epistemically damaging feature exists, nor even have the *potential* for collecting such evidence in the future. Epistemically damaging features “might not be empirically testable, at least in realistic practice”.⁴⁰ Estlund calls these *empirically latent* features, and he thinks that they can serve as reasonable grounds to reject epistocratic rule.

Estlund asserts, in fact, that we might reasonably object to epistocracy on *even vaguer* grounds. There might be *conjectural* features of a ruling arrangement that are reasonable to believe exist. We could reject epistocracy despite lacking conclusive evidence for some epistemically damaging feature *X*. We could reject epistocracy despite lacking *any* evidence, period, of *X*. We could reject epistocracy even if we were unable to describe *what X is* (racism, sexism, *etc.*) We need only conjecture that epistocracy has *some* epistemically damaging feature; we need not have any idea what that feature might be. The idea is that we might reasonably infer from “the actual history of ruling arrangements that privilege some citizens over others”⁴¹ that there is *some* epistemically damaging feature carried along with epistocracy.

Here are three replies: First, public reason is not *carte blanche* to reject political systems on highly speculative grounds. A reasonable objection is made by a thoughtful person in good

⁴⁰ *Ibid.*, p. 216.

⁴¹ *Ibid.*, p. 218.

command of the conceptual ideas and of the historical facts. He might still err. Public reason is designed to accommodate good-faith error. But it does not sanction political nullification via wild hypothesizing. Public reason rules out laws justified by religious dogma, since some of us will reasonably refuse to endorse that method of justification. We view the evidence in favor of the dogma as weak, and observe that it is incompatible with the views of other, equally well-supported, religions. We know from history that theocratic rule poses a danger to civil liberties, and we have well-developed theories about why these liberties are important. Of course we may be wrong. But it is reasonable to believe that we are not. The evidence that we adduce for our reasonable objection need not be decisive, but it must at least be extant. Estlund's standard of proof captures none of this.

Second, we might once again turn Estlund's argument on its head by inferring a conjectural epistemically damaging feature of democracy. Since the actual history of democratic rule is replete with instances of damaging disenfranchisement, the present political arrangement is likely to possess one as well. American democracy has, over the years, wrongly denied the vote to African-Americans, to women, to Native Americans, and to young adults. Maybe a lesson to learn from this history is that at each moment we are disenfranchising some group in an epistemically damaging way to our democracy (to say nothing of justice). Although the specific disenfranchisement only becomes apparent in retrospect, the fact *of* disenfranchisement is something that we can know, or at least have confidence in, contemporaneously. (Maybe we could speculate about its content: We damage our democracy when we disenfranchise children, or felons, or those suffering from "mental incapacity").⁴² Note that I think that this is a bad argument against democracy. But it is one that Estlund is committed to if he regards conjectural features as sufficient to meet the reasonableness threshold of public reason.

42 42 U.S.C. §1973–gg–6(a)(3)(B).

Third, Estlund's approach has the practical effect of stifling philosophical debate about the merits of democracy. After beginning with a presumption in favor of democracy (which, as I argued in §4, is a mistake), Estlund provides an account of public reason that rules out, no matter the evidence in hand, *all* alternatives to his preferred theory. If we can conjure up a demographic feature that could, conceptually, defeat whatever advantages a non-democratic theory might have, then that is a sufficient ground to reject the theory and fall back on democracy. In the case of empirically latent features, we could be without hope of obtaining evidence to support our objection. And if even that is too heavy a lift for the democrat, then he can turn to conjectural features and reject epistocracy on the grounds that it might have some epistemically damaging feature, we know not what. Estlund's theory thus has the unhappy distinction of being both unverifiable in the positivist sense and unfalsifiable in the Popperian sense. We can never verify empirically latent features because they are "impossible to convincingly confirm or disconfirm empirically",⁴³ and we can never falsify the theory because no amount of evidence is sufficient to defeat conjectural features.

6. Conclusion

I have sought to rebut a specific objection to epistocracy. My argument does not prove that epistocracy can be justified under public reason; it shows that one attempt to prove that it cannot fails. Nevertheless, there are wider implications of my argument.

First, *any* attempt to disqualify a political arrangement on demographic grounds will fail. For example, epistocrats cannot argue that democracy is unjustifiable owing to epistemic bias. That argument runs afoul of the viability constraint.

Second, many (but not all) potential objections under public reason are ruled out by the

⁴³ Estlund, *Democratic Authority*, p. 217.

viability constraint. For any given public-reason based objection, ask yourself: Could a reasonable person level this objection, *mutatis mutandis*, against all other plausible political arrangements? If the answer is “yes” then the objection is unsound.

Third, in light of the analysis given in §5 we must confront the possibility that *no* political arrangement can be justified under public reason. Democracy, after all, is open to a host of public reason-based objections quite independent of demographic considerations. For example, Brennan argues that (1) citizens have a right not to be ruled by incompetent or morally unreasonable people, and (2) this is precisely what happens in a democracy.⁴⁴ For this reason, Brennan says, epistocracy is justifiable under public reason but democracy is not. Maybe that’s right and maybe it isn’t, but it’s an argument that appeals to tangible evidence and does not rely on empirically latent or conjectural features—and thus well surmounts the justificatory hurdle of public reason.

Or consider a *lottocracy*, a system under which political officials, such as legislators, are chosen from among the electorate by lottery rather than elections. Alexander Guerrero proposes a lottocratic alternative to democracy which, he suggests, is more responsive to citizens’ preferences and epistemically superior.⁴⁵ If democracy cannot wrap itself in a cloak of immunity—and, as I argued in §4, it cannot—then it is unjustifiable under public reason, since Guerrero’s proposal, right or wrong, seems at least to be reasonable.

These considerations illuminate the futility of trying to disqualify epistocratic (or democratic) political arrangements on dubious grounds of public reason; the democrat can conjure up some objection, of unknown truth, which is plausible enough to count as reasonable,

44 Jason Brennan, “The Right to a Competent Electorate”, *Philosophical Quarterly* 61 (2011): 700–24; “Epistocracy within Public Reason”, in Ann E. Cudd and Sally J. Scholz (eds.), *Philosophical Perspectives on Democracy in the 21st Century* (Cham, Switzerland: Springer, 2014), 191–204.

45 Alexander A. Guerrero, “Against Elections: The Lottocratic Alternative”, *Philosophy & Public Affairs* 42 (2014): 135–78.

and the epistocrat can fire back with one of his own. It is not likely to be a productive dialectic.

Where does this leave our larger project of justifying our political arrangements? We have three options.

Option (1): We can accept the public reason framework and the weak definition of “reasonable” commonly appealed to. We are then inexorably led, it would seem, to the conclusion that no political arrangement can be justified under public reason. Legitimate political rule is impossible. We ought to be anarchists.

Option (2): Jettison public reason and look elsewhere for our political justification. Here we agree that public reason cannot provide political justification but then rely on other arguments for the legitimacy of political rule—appealing, perhaps, to the consent of the governed or considerations of utility. This option has the benefit of retaining political authority, but at the cost of a theory—public reason—which many contemporary thinkers consider the most promising route to its justification.

Option (3): Provide a new, concrete, and better definition of “reasonable”. I endorse this option. For Estlund it suffices that an objection not be “beyond the pale”, but that is far too lax a standard. I cannot say here how we ought to define a “reasonable objection”, but it surely should not be one which relies on empirically latent or conjectural features. I suspect, in fact, that an operative definition will rule out many objections that have actual, empirical support as well as the backing of experts. Any definition of “reasonable” which will allow our arguments to satisfy the viability constraint will probably exclude from the debate over political legitimacy arguments that some people consider plausible. But by adopting that definition, we open a path to the political authority—maybe epistocratic, maybe democratic, maybe something else—that is justifiable to all.⁴⁶

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